

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----X  
4 UNITED STATES OF AMERICA, : CR-02-1188  
5 : (JS)  
6 -against- : United States Courthouse  
7 : Central Islip, New York  
8 DAGOBERTO FLOREZ RIOS, : October 20, 2009  
9 : 11 a.m.  
10 Defendant. :  
11 -----X

12 TRANSCRIPT OF SENTENCING  
13 BEFORE THE HONORABLE JOANNA SEYBERT  
14 UNITED STATES DISTRICT COURT JUDGE

15 APPEARANCES:

16 For the Government: BENTON J. CAMPBELL, ESQ.  
17 UNITED STATES ATTORNEY  
18 BY: BONNIE KLAPPER, AUSA  
19 One Pierrepont Plaza  
20 Brooklyn, New York 11201

21 For the Defendant: DAVID WIKSTROM, ESQ.

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25 Proceedings recorded by mechanical stenography.  
Transcript produced by CAT.

Paul J. Lombardi, RMR, FCRR  
US District Court Reporter

1 THE CLERK: For sentencing United States v Rios.  
2 Your appearances, please.

3 MS. KLAPPER: Good morning, your Honor.  
4 Bonnie Klapper for the United States.

5 THE COURT: Good morning, Ms. Klapper.

6 MR. WIKSTROM: David Wikstrom for Mr. Rios.  
7 Good morning, your Honor.

8 THE COURT: Good morning, Mr. Wikstrom.  
9 Is the defendant ready for sentence?

10 MR. WIKSTROM: He is, your Honor.

11 THE COURT: If he would rise, we'll have him  
12 sworn in.

13 We have the interpreter who has previously taken  
14 an affirmation.

15 (Defendant sworn.)  
16

17 THE COURT: You have been sworn in, sir. That  
18 means you must tell the truth.

19 If you don't tell the truth, you will be charged  
20 with perjury and face additional jail time.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If at any time you don't understand  
24 something I'm saying, or you want to speak to your  
25 attorney let me know and I'll give you that opportunity.

1     You can speak with him in private.

2             All right?

3             THE DEFENDANT: Sure.

4             THE COURT: I'm going to ask you a series of  
5     questions to see if you understand all these proceedings  
6     and all of your rights.

7             Do you understand?

8             THE DEFENDANT: I do.

9             THE COURT: Prior to coming to court today, have  
10    you had any drugs, alcohol, medication of any kind?

11            THE DEFENDANT: No.

12            THE COURT: I noted in your probation report  
13    that you do take medication for blood pressure.

14            THE DEFENDANT: Yes, for blood pressure.

15            THE COURT: Did you have that today?

16            THE DEFENDANT: No.

17            THE COURT: Does that affect your ability to  
18    understand these proceedings?

19            THE DEFENDANT: No. No.

20            Not at all.

21            THE COURT: Is there some reason why you didn't  
22    take it today?

23            THE DEFENDANT: Because it took me out very  
24    early in the morning and it was going to affect my  
25    stomach.

1 THE COURT: All right.

2 Can you tell me are you satisfied with the  
3 services of your attorney?

4 THE DEFENDANT: I'm very satisfied with the  
5 services.

6 THE COURT: Good.

7 And Mr. Wikstrom has advised you and shown you  
8 the presentence investigation report and told you, I'm  
9 sure, that you have a right to speak at this sentence  
10 hearing and tell the court what you believe the  
11 appropriate sentence should be.

12 You have a right to contest certain things in  
13 the presentence investigation report, the right to send  
14 letters in to the court, family members, et cetera, to  
15 state what they believe your sentence should be.

16 Do you understand all of those rights?

17 THE DEFENDANT: Yes, sure.

18 I do.

19 THE COURT: Okay.

20 Prior to your sentence, I have reviewed a number  
21 of items. One has been the plea agreement and you pled  
22 guilty to the count in the superseding indictment and that  
23 was done more than two years ago you entered a guilty  
24 plea.

25 At that time you indicated that between 1997 and

1     2001 you had agreed to possess cocaine and transport it to  
2     the United States laundering --

3             THE DEFENDANT: Yes.

4             THE COURT: Millions of dollars and that amount  
5     exceeded more than 5 kilograms.

6             At the time your plea was taken, there was no  
7     entry, docket entry made at the request both of your  
8     attorney and the US Attorney's Office in view of the  
9     security issues that have arisen.

10            I have also reviewed the presentence  
11     investigation report. I have reviewed the recommendation  
12     of the probation department which is confidential, but I  
13     will disclose it in my discretion.

14            The recommendation of the probation department  
15     is \$25,000 in a fine payable or due immediately and  
16     payable in six months of your sentence, 240 months in  
17     custody, five years supervised release with the special  
18     conditions that you comply with the fine payment schedule,  
19     that you make full financial disclosure to the probation  
20     department, that you not possess a firearm, ammunition or  
21     destructive device, and that if you are deported that you  
22     not illegally reenter the country, the United States.

23            A custodial sentence of the comments is  
24     suggested of 240 months and that is viewed as appropriate  
25     in meeting the need for punishment deterrence. Although

1 this is below the low end of the advisory guideline range,  
2 it is still substantial and appears appropriate for this  
3 very serious, but nonviolent, first-time offense.

4 The defendant played a prominent role in a  
5 Colombian drug cartel and is responsible for some 3,500  
6 kilograms of cocaine. As a lieutenant in the  
7 organization, the defendant managed logistics for  
8 international cocaine shipments and day-to-day operations.  
9 The defendant, age 52, is a native of Colombia. He's in  
10 the United States pending sentence for the instant  
11 charges.

12 The defendant and his numerous siblings were  
13 raised by a farming couple under unremarkable  
14 circumstances in Colombia. He has been married twice, and  
15 has four children, two of whom are minors. The defendant  
16 enjoys generally stable health, although he does suffer  
17 from several conditions, such as hypertension and  
18 gastritis, which are treated with medication.

19 And it goes on to note that a fine is  
20 recommended because it is not known how much any profit  
21 was realized from the defendant's participation in the  
22 events. Also he owns some property in Colombia on which  
23 the fine amount is based, and is paying for his legal  
24 representation.

25 Full financial disclosure is recommended to

1 assist the probation department in monitoring the payment  
2 of the fine and to obtain a more complete financial  
3 profile.

4 The defendant has a cooperation agreement with  
5 the government. However, the extent and significance of  
6 his assistance is unknown to the probation department. As  
7 such, this factor has not been considered in formulating  
8 the recommended sentence.

9 I also have reviewed the government's 5K1 motion  
10 of September 29, 2009. I reviewed Mr. Wikstrom's letter,  
11 which is precise and to the point and very well written of  
12 October 13, 2009.

13 Should I have anything else?

14 MS. KLAPPER: Not from the government, your  
15 Honor.

16 MR. WIKSTROM: No, your Honor.

17 THE COURT: Okay.

18 So essentially the defendant had currently time  
19 spent in custody, he was arrested in Colombia back in --

20 MR. WIKSTROM: December 27, 2004.

21 THE COURT: Okay.

22 MR. WIKSTROM: In two months, it will be a total  
23 of five years.

24 THE COURT: In your letter you do not object to  
25 any of the calculations in the sentencing guidelines.

1 MR. WIKSTROM: That's correct.

2 THE COURT: Therefore, the court will accept the  
3 guideline calculation and the contents of the presentence  
4 report without any amendments.

5 The government is on board with that, correct?

6 MS. KLAPPER: Yes, your Honor.

7 THE COURT: All right.

8 So we have a 52 year old defendant with no prior  
9 criminal history who happens to marry the sister of one of  
10 the principals in this Norte Valey organization, and the  
11 issue is based on what he's done cooperation wise and his  
12 initial request to deal with this before he was arrested,  
13 how much leniency should be shown to him.

14 What would you like to say, Mr. Wikstrom?

15 MR. WIKSTROM: I want to thank the court for  
16 reviewing the documents already submitted to it in  
17 connection with sentence.

18 I know your Honor has presided over this case  
19 for a number of years and has already imposed a number of  
20 sentences on codefendants, and I don't think I would be  
21 presumptuous in assuming that the court has an idea of  
22 where it intends to sentence Mr. Florez Rios this morning.

23 And because of the court's familiarity, I don't  
24 have to speak at great length, nor do I feel to write at  
25 great length. But there are a few points that I think



1       this morning deserve special emphasis.

2               I addressed in my letter the organizational role  
3       enhancement. But I also want to address weight, and I  
4       didn't write about that. But Mr. Florez Rios is at level  
5       38 and there's a note that indicates that 3,500 kilos is  
6       about 20 times higher than the 150 kilograms necessary to  
7       reach the Section 2D stratosphere, the highest level.

8               And I think in terms of guidelines in the  
9       United States, those guidelines make sense because if one  
10      is a drug dealer in New York and has hundreds of kilos,  
11      that denotes here a level of sophistication and long  
12      experience, resources to purchase that kind of weight,  
13      typically an organizational structure that is not  
14      insignificant, a security apparatus and the like. And all  
15      of those things correlate with culpability.

16              Not so, however, your Honor, in the world that  
17      Mr. Florez Rios inhabited, where the nation produces 6 to  
18      800 tons, millions of pounds annually according to the  
19      GAO, and it is a huge component of Colombia's gross  
20      domestic product. Mr. Florez Rios, simply by agreeing  
21      with his brother-in-law to help him out in the business  
22      came in at level 38, although his only experience  
23      theretofore had been as a driver.

24              So I'm not quarrelling with the weight and I'm  
25      not objecting to it, and it is a huge amount of drugs that

1     were imported by this cartel of which this defendant was  
2     in management for a period of three years out of his 52.

3             There are in his case, your Honor, factors which  
4     I think are unusual, maybe even unique. He became middle  
5     management by virtue of the marriage to Arcangel's sister.  
6     Not because he worked his way through the system or  
7     partnered up with people or eliminated competition or  
8     cornered the market but he entered the level of the  
9     business at that level by way of Arcangel's sister.

10            What struck me when I met the defendant and what  
11     struck me today and what I hope strikes your Honor since  
12     you have only seen this man twice over the last four years  
13     is that he was out of the business for years before he was  
14     indicted and before he was arrested. And that is simply  
15     not so with respect to many of his codefendants and many  
16     of the typical drug defendants who come before this court,  
17     all of whom, most of whom, your Honor, keep dealing until  
18     the moment handcuffs are put on them and, in some cases,  
19     even thereafter.

20            This defendant was, according to him, out of the  
21     business and retired and according to Arcangel he was  
22     fired. But, in any event, he was out of the business no  
23     later than 2002, and got arrested, as I said, in December  
24     of 2004.

25            When I met Mr. Florez Rios five years ago, he

1 had made what struck me then and strikes me still today as  
2 a very mature, adult, conscious decision to face the  
3 music, to atone for his crimes and pay his debt to  
4 society, hoping only to have the chance to reunite with  
5 his family, and I must say there were about 20 people in  
6 the room, including his wife and children, siblings,  
7 cousins and the like.

8           Some of them are here today. I note for the  
9 record the presence of Julia Henao and Stella Henao,  
10 Mr. Florez Rios's wife, who I described in my letter,  
11 seated in the front row and the defendant's mother-in-law,  
12 who is seated to Stella's left.

13           At no time has this defendant discussed these  
14 events which I commonly hear, and I imagine the court does  
15 too, rationalizations, minimizations, the dash for the  
16 privity of a conspiracy, the kind of self-justifying  
17 minimization that is common.

18           He's never whined about the conditions while  
19 incarcerated, a common thing I'm sure the court has heard  
20 about in connection with people's sentences. He is candid  
21 to a fault, and responsible and mature. He's not school  
22 smart, but he is a very wise 52 year old man who loves his  
23 family very much, and decided to reach out to the  
24 government to seek the cooperation agreement, to seek to  
25 surrender to United States custody at a time when he was

1 still hiding.

2 Unlike many of the people whom you have  
3 sentenced or will sentence here who took off for Venezuela  
4 or Cuba or continue to deal in 2003, and 2004, and even  
5 later.

6 The court has imposed a couple of other  
7 sentences that I think are relevant. I know that  
8 Mr. Sabogal was sentenced to six years in custody, and he  
9 was the right-hand man of a much more significant player,  
10 much more weight, multiples of the weight of this  
11 defendant, and who was in the business for a longer period  
12 of time.

13 I know that Mr. Rendon was sentenced to about  
14 seven years or six and a half, also in business for a  
15 longer period of time and this defendant, your Honor, was  
16 the first to sign a cooperation agreement with the  
17 government. And that is a fact that is, in my view, not  
18 insignificant.

19 Many people decide to cooperate when they know  
20 that they are getting the water from the cooperation of  
21 others and as I put in my letter, this defendant was the  
22 first to execute a cooperation agreement with the  
23 government and that is a meaningful fact and one that only  
24 he can make.

25 I note the presence of a case agent, Romedio

1 Viola who I want to thank for his efforts and his kind  
2 courtesy to this defendant and his professionalism  
3 throughout.

4 Out of his 52 years on this earth, your Honor,  
5 Mr. Florez Rios strayed for three of them. He grew up a  
6 farmer. He had returned to farming and lived modestly  
7 with his family and it is that life to which I hope in the  
8 near future he can return, and I ask you, under all of  
9 these circumstances, to be as gentle with him as you can.

10 And I know that the defendant, himself, wants to  
11 address the court and would like to give him a chance to  
12 do that now.

13 THE COURT: If you would, Mr. Florez. Excuse  
14 me, Mr. Florez.

15 Just let the translator tell us what you are  
16 saying in English, please.

17 THE DEFENDANT: There are many people to whom I  
18 owe apologies for my crimes.

19 First, I want to apologize to my wife and to my  
20 children to whom I caused so much harm on these last five  
21 years. I also want to beg the forgiveness of the court  
22 and of the government. I know that I was in the wrong  
23 business when I got involved and I want this judge to know  
24 that when I left it to go back to being a farmer, I did so  
25 with a sense of relief.

1 I want to thank Mrs. Clapper and the agent  
2 Romedio Viola who have been only professional and too kind  
3 and who have given me an opportunity these last few years  
4 to rectify my misdeeds from previous years.

5 I want your Honor to know that I had already  
6 returned to a simple life, that I was working honestly,  
7 that I was taking care of my wife and children, and that  
8 it is to that life that I will return.

9 This judge should never fear that I will be  
10 breaking the laws again, and, finally, I want to thank  
11 your Honor for your patience and for your consideration.

12 THE COURT: Ms. Klapper, is there anything the  
13 government wants to add?

14 MS. KLAPPER: Your Honor, I do believe that  
15 Mr. Wikstrom did an excellent job, and I stand by  
16 everything in the government's 5K.

17 There was one factual inaccuracy in  
18 Mr. Wikstrom's presentation which was he said to your  
19 Honor please consider that Mr. Florez has only been  
20 involved for three years and, in fact, at a much, much  
21 lower level he was involved --

22 THE COURT: He was a cook for a couple years and  
23 a driver.

24 MS. KLAPPER: Yes, your Honor, and a driver for  
25 Arcangel.

1           I do think, your Honor, the fact that Mr. Rios  
2     pleaded quickly and cooperated quickly did send a message  
3     to the defendants who were thereafter expedited that this  
4     was the path to take, and I think that helped the  
5     government in all of its subsequent negotiations with  
6     other codefendants.

7           Other than that, your Honor, I can say  
8     personally, Agent Viola and I have always found the  
9     defendant to be completely credible and only disappointed  
10    that he didn't have more information to provide to the  
11    government.

12           THE COURT: Well, I remember when this plea was  
13    taken I made some notations that at that time the docket  
14    entry was not made based upon the fact that the government  
15    had information that a group of lawyers had been retained  
16    to check docket entries and threaten family members.

17           So based upon that representation, and the  
18    representation that there were at least three fugitives  
19    that the government was interested in, and I wrote their  
20    names down, and I note that at least one of them is  
21    currently or has been apprehended and the other  
22    information that the defendant provided to the government.

23           With respect to counsel's comment, Ms. Klapper,  
24    on the defendant's position in the particular Arcangel  
25    arm, if you will, or organization as compared to some of

1 the others, Mr. Bustamente and a variety of other ones,  
2 would you say it was on a similar par of Mr. Rendon who  
3 received seven years?

4 Or was the defendant's involvement more intense?  
5 Because he did do a lot. He made all the arrangements, a  
6 lot of cocaine to be shipped into the United States.

7 MS. KLAPPER: I would say his position was  
8 analogous to the position Sabogal occupied with  
9 Bustamente.

10 The organization was smaller.

11 THE COURT: The organization of this defendant  
12 was smaller.

13 MS. KLAPPER: Yes, your Honor.

14 THE COURT: Substantially smaller, fair to say?

15 MS. KLAPPER: For the three years in which he  
16 was involved, it was substantially smaller. Let me say  
17 that.

18 THE COURT: Okay.

19 MS. KLAPPER: And less sophisticated.  
20 Bustamente's part of the organization was far more  
21 sophisticated, far more regular.

22 As a result, this defendant had less to do, but  
23 his role was similar to that of Sabogal, though for far  
24 fewer years.

25 THE COURT: And Mr. Sabogal received a sentence



1 of?

2 MS. KLAPPER: Your Honor, you sentenced him to  
3 six months -- excuse me -- six years, almost exclusively  
4 because of the cooperation leading to the apprehension of  
5 the fugitive who we discussed at sidebar.

6 And also he was similarly situated to this  
7 defendant in that both were in the process of arranging  
8 surrenders when they were apprehended.

9 THE COURT: That was my recollection also.

10 The other remaining question I had,  
11 Mr. Wikstrom, has to do with the defendant's assets.  
12 There is no financial statement submitted with respect to  
13 any possible fine or whether or not these farms were  
14 purchased with proceeds of his earnings from his  
15 involvement in the crime, I can't say.

16 Do you have any further information on that? If  
17 not, I'll be inclined to accept the information or the  
18 recommendation, rather, of the probation department.

19 MR. WIKSTROM: I don't know, your Honor, frankly  
20 why the financial statement was not submitted, and I  
21 apologize to the court.

22 If you feel it appropriate to adjourn so that  
23 one can be prepared, I'm happy to accommodate the court.  
24 Probation recommends that the defendant is able to pay a  
25 fine.

1 I don't have any reason to doubt that, frankly.

2 THE COURT: And that's based on his assets in  
3 Colombia.

4 MR. WIKSTROM: Your Honor, and I have no doubt  
5 that I think this defendant would be the first to admit  
6 that to the extent he had earnings from this business,  
7 that they were used to purchase the farm he retired to.

8 So I don't think he would claim poverty or an  
9 inability to pay a fine.

10 THE COURT: And I note that family members are  
11 here today.

12 MR. WIKSTROM: They are.

13 THE COURT: They were able to afford to come to  
14 the United States.

15 MR. WIKSTROM: And to retain counsel, and they  
16 have come, from time to time, to visit him.

17 So they are a family that has some resources.  
18 The precise number, I don't know, and I'm happy to  
19 accommodate the court, should you wish, and prepare a  
20 financial statement. But I would not challenge the  
21 assertion that he's able to pay a fine.

22 THE COURT: Thank you.

23 So essentially the defendant has in terms of  
24 credit, jail time credit here in the United States, it's  
25 substantially less than the five years because he spent

1       how much time in Combita?

2                   MS. KLAPPER: The Bureau of Prisons will credit  
3       him fully for the time he spent in Colombia.

4                   The almost five years will be credited fully to  
5       whatever sentence your Honor imposes.

6                   THE COURT: If I were to incorporate obviously  
7       the level 39, I'm going to reduce substantially based on  
8       his cooperation and his desire to surrender in advance of  
9       his arrest, and the fact that he had returned to a  
10      law-abiding life, apparently, prior to his apprehension.

11                  And his rather unique position of being the  
12      brother-in-law of the head of the organization. I would  
13      be looking to sentence the defendant to a term of 66  
14      months, which would enable him to be released at this  
15      point in time, I would think because he has almost five  
16      years in, and he would get some good time credit.

17                  MR. WIKSTROM: I believe that that would be the  
18      same as a time served sentence.

19                  He has served 58 months and on 66 I believe the  
20      good time is roughly nine months. So he would have done  
21      it all.

22                  THE COURT: And I do this based fully on the  
23      fact that this defendant, along with at least one other  
24      defendant in the more massive organization, has  
25      demonstrated that he understands the seriousness of this

1 offense.

2 He is a first-time offender. He has his family  
3 support here. He removed himself from the criminal life  
4 prior to the apprehension. I think that the punishment  
5 has been sufficient. It bodes well that the defendant has  
6 not tried in any way to minimize his involvement, nor  
7 sought sympathy for his conditions of confinement.

8 I believe that he has an excellent chance at  
9 rehabilitation because there's no way he can get himself  
10 involved again in any kind of drug trafficking. So it  
11 would meet all the requirements of 3553.

12 And I impose a sentence of a fine of \$25,000,  
13 which is due immediately and payable within six months of  
14 the sentence, the 66 months in custody, five years  
15 supervised release with the conditions that I previously  
16 noted, and a \$100 special assessment and, of course, the  
17 defendant is prohibited from possessing any firearms.

18 MR. WIKSTROM: Thank you, your Honor.

19 May I ask the court for -- to place in the  
20 judgment and commitment form two recommendations, and this  
21 may be redundant in light of Ms. Klapper's remark.

22 But I would like the court to recommend that  
23 under 3585, Mr. Florez Rios receive credit for the time  
24 spent between 12/27, 2004 and I believe it's July 31st of  
25 2006 as time spent in custody on these charges which was

1 not credited toward any other sentence or pending charge?

2 And that may happen automatically in light of  
3 what Ms. Klapper said.

4 THE COURT: Let's make sure.

5 MR. WIKSTROM: I would like to make sure there  
6 is something in the court's order that I could point to  
7 should it become an issue.

8 THE COURT: Okay.

9 MR. WIKSTROM: And I would also ask the court to  
10 recommend that Mr. Florez Rios be repatriated as swiftly  
11 as possible within the ICE system so that he doesn't  
12 languish several more months awaiting flight.

13 MS. KLAPPER: Your Honor, just to be clear, my  
14 records show that Mr. Dagoberto Florez Rios was arrested  
15 on December 27, 2004 and extradited on August 31, 2006.

16 MR. WIKSTROM: Thank you.

17 MS. KLAPPER: I'm sure he knows best.

18 Maybe you want to double-check with Mr. Florez  
19 Rios so that your J&C is accurate.

20 MR. WIKSTROM: August 30th.

21 MS. KLAPPER: August 30th, your Honor.

22 THE COURT: August 30th it is.

23 And I'll make the recommendation that he be  
24 repatriated as quickly as possible by ICE.

25 MR. WIKSTROM: Finally, your Honor, in light of

1 the representations I would ask that the transcript of  
2 this proceeding be sealed.

3 MS. KLAPPER: Your Honor, what I would like to  
4 say is that we have no objection to the sealing of the  
5 actual transcript.

6 But we would ask that all of the proceedings  
7 previous to today's date and today's date be docketed.

8 MR. WIKSTROM: Of course.

9 THE COURT: It has to be docketed.

10 MR. WIKSTROM: Absolutely, your Honor.

11 THE COURT: So I will seal based on the  
12 statements involving his cooperation that are in this  
13 transcript.

14 I will seal the record on that and the entry,  
15 the docket entries as to what his sentence is and the  
16 prior guilty plea will be made.

17 MR. WIKSTROM: Thank you.

18 THE COURT: Thank you.

19 The defendant is advised that any appeal he  
20 seeks must be filed within ten days of today, and he must  
21 file a notice of appeal with the Second Circuit. If funds  
22 cannot be found or are not available to him to pay  
23 counsel, counsel can be appointed.

24 Is your client seeking to appeal?

25 MR. WIKSTROM: He will not appeal, your Honor.

1 THE COURT: Okay.

2 MS. KLAPPER: Your Honor, at this time the  
3 government moves to dismiss the second, fourth, fifth,  
4 seventh, eighth, and ninth superseding indictments and  
5 counts two, three, nine, 17, 21 and 22 of the third  
6 superseding indictment in the interests of justice.

7 THE COURT: That application is granted.

8 MR. WIKSTROM: Thank you.

9 MS. KLAPPER: Thank you, your Honor.

10 THE COURT: That completes the proceeding.

11 Have a good day.

12 (Matter concluded.)

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